United States Court of Appeals

for the Second Circuit



PETITIONER'S BRIEF AND APPENDIX

76-4214

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-4214

NICHOLAS S. NUNEZ-ORELLANA,
Petitioner,

—v.—

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Petition for Review of an Order of the Board of Immigration Appeals

BRIEF FOR PETITIONER AND JOINT APPENDIX

POLLACK & KRAMER
Attorneys for Petitioner
225 Broadway
New York, New York 10007
(212) 233-8100

ROBERT F. GREENSTONE
Of Counsel

UNITED STATES COURT OF APPEALS
FILED
NOV 15 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

B
P/S

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

		Page
I.	Table of Authorities	i
II.	Statement of Issue Presented For Review	1
III.	Statement of the Case	1
IV.	Statement of Facts	2
V.	Summary of Argument	4
VI.	Relevant Statute and Regulation	5
VII.	Argument	6
	POINT I	
	THE BOARD OF IMMIGRATION APPEALS' DECISION AFFIRMING THE IMMIGRATION JUDGE'S DENIAL OF PETITIONER'S APPLICATION FOR WITHHOLDING OF DEPORTATION WAS CONTRARY TO LAW AND AN ABUSE OF DISCRETION	6
VIII.	Conclusion	13
IX.	Joint Appendix	A

TABLE OF AUTHORITIES

CASES CITED

	Page
Sovich v. Esperdy, 319 F.2d 21(2nd Cir.1963).....	6, 9
U.S. ex rel. Fong Foo v. Shaughnessy, 234 F.2d 715 (2nd Cir.1955).....	7, 11
U.S. ex rel. Mercer v. Esperdy, 234 F.Supp 611 (SDNY,1964).....	8

MISCELLANEOUS REFERENCE

United Nations Economic and Social Council- Report on The Situation of Human Rights in Chile, U.N. Document #A/31/253 (1976).....	10

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NICOLAS S.NUNEZ-ORELLANA,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the decision of the Board of Immigration Appeals affirming the Immigration Judge's denial of petitioner's application for withholding of deportation was contrary to law and an abuse of discretion.

STATEMENT OF THE CASE

This petition has been brought to review a final determination of the Immigration and Naturalization Service. Jurisdiction of this Court is invoked under 8 U.S.C. 1105(a).

On November 20,1975, the Immigration Judge, following a denial of petitioner's application for withholding of deportation made pursuant to 8 U.S.C. 1253(h), entered an order of deportation against petitioner with a provision for voluntary departure.

The order of the Immigration Judge was affirmed by a

decision of the Board of Immigration Appeals dated and entered August 16,1976.

The instant petition for review was filed with this Court on September 24,1976.

STATEMENT OF FACTS

Petitioner, NICOLAS S.NUNEZ-ORELLANA is a native and citizen of Chile who entered the United States on October 8,1971 with a visitor's visa authorizing his stay in this country until January 10,1972. He is married to a native and citizen of Chile who resides there with their son.

As a result of overstaying the authorized period, the petitioner became subject to deportation proceedings pursuant to 8 U.S.C. 1251(a)(2). An Order to Show Cause was issued by the Immigration and Naturalization Service (hereinafter "the Service") and was duly served upon the petitioner.

On March 17,1975 the petitioner applied to the District Director in New York for a grant of political asylum. In a letter dated August 4,1975 the District Director denied the request for asylum and forwarded the request to the Department of State for an advisory opinion. On August 28,1976 the District Director advised the petitioner that the Service in consultation with the Department of State had found no basis for granting political asylum.

Thereupon, on November 20,1975 a deportation proceeding was held at the district office in New York, New York, before an Immigration Judge.

At this hearing the petitioner requested that deportation be withheld pursuant to 8 U.S.C. 1253(h) and also requested the privilege of voluntary departure.

In substantiation of his claim for relief under 8 U.S.C. 1253(h) the petitioner testified that his sister-in-law, a Communist, had been arrested by the military junta in Chile and her whereabouts were unknown. He further testified that the police had come to his house while his wife and son were at home, searched the house, questioned his wife as to petitioner's whereabouts and took an unknown amount of currency from the wife. He further testified that due to his family's (sister-in-law) political association, that should he return to Chile he would face police "investigation" and imprisonment.

At the conclusion of the hearing, the Immigration Judge rendered an opinion dated November 20,1975 denying petitioner's request for withholding of deportation but granting the privilege of voluntary departure.

The Board of Immigration Appeals affirmed the decision of the Immigration Judge on August 16,1976.

This petition has been brought to review the respondent's denial of relief under 8 U.S.C. 1253(h) as being

contrary to law.

SUMMARY OF ARGUMENT

Petitioner claims that the failure of the Service to adhere to Congressional intent by their arbitrary arrival of an administrative opinion was contrary to law and an abuse of discretion.

RELEVANT STATUTE

Immigration and Nationality Act, 66 Stat. 163(1952), as amended:

Section 243, U.S.C. §1253 -

> (h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion or political opinion and for such period of time as he deems to be necessary for such reason.

RELEVANT REGULATION

Title 8, Code of Federal Regulations (C.F.R.)§242.18

242.18 Decision of special inquiry officer.

> (a) Contents. The decision of the special inquiry officer may be oral or written. Except when deportability is determined on the pleadings pursuant to §242.16(b), the decision of the special inquiry officer shall include a discussion of the evidence and findings as to deportability. The formal enumeration of findings is not required. The decision shall also contain a discussion of the evidence pertinent to any application made by the respondent under §242.17 and the reasons for granting or denying the request. The decision shall be concluded with the order of the special inquiry officer.

ARGUMENT

POINT I

THE BOARD OF IMMIGRATION APPEALS' DECISION AFFIRMING THE IMMIGRATION JUDGE'S DENIAL OF PETITIONER'S APPLICATION FOR WITHHOLDING OF DEPORTATION WAS CONTRARY TO LAW AND AN ABUSE OF DISCRETION.

The Attorney General by virtue of 8 U.S.C. 1253(h) has the authority..."to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion..." This authority has been delegated by the Attorney General to the Immigration Judge, 8 C.F.R. 242.8(a), and to the Board of Immigration Appeals, 8 C.F.R. 3.1 who are constrained in the exercise of this delegated authority as would the Attorney General.

In exercising his authority the Attorney General must adhere to the intent of Congress when it provided for the withholding of deportation to a country where the alien in the opinion of the Attorney General would be subject to persecution for the above stated factors. The intent of Congress in providing for the withholding of deportation in these instances was succinctly stated by this Court in Sovich v. Esperdy, 319 F.2d 21.27 (2nd Cir.1963):

> Section 243(h), like its predecessor statute, reflected the humanitarian concern of Congress that aliens

> should not be expelled from our shores into the hands of totalitarian regimes unwilling to recognize even elementary standards of human decency. Neither the Attorney General nor his delegates in the Immigration and Naturalization Service are better able than we to gauge the bounds of that Congressional concern, and thus to define the limits within which the Attorney General's discretion is to operate.

It is thus elemental that the claim of the alien to potential persecution must be measured against the prevailing political situation of the designated country. Using this standard,a claim of persecution for political opinion would undergo an infinitely more rigorous test if the designated country were Sweden and undoubtedly would be nigh impossible were it the United States. Consequently, an undisputably important factor is to which country the alien is being deported.

This Court in the past has taken judicial notice of the deprivation of human rights in the designated country. United States ex rel. Fong Foo v. Shaughnessy, 234 F.2d 715,719 (2nd Cir.1955):

> The Attorney General by his subordinate found as a fact that appellant would not be "subject to physical persecution" by the Chinese Communist Government. I think we can and should take judicial notice of the notorious and virtually indisputable fact-almost uniformly reported in all pertinent

> accounts-of the ruthless behaviour of the Communist governments in China and Russia, so that almost surely a Chinese, known to have allied himself with the Formosa Government, will be tortured and exterminated if found on the mainland of China.

Again, in United States ex rel. Mercer v. Esperdy, 234 F.Supp 611,616, Judge Tenney stated "It is common knowledge, and a fact of which the Court will take judicial notice [citing the above case] that the present regime in Haiti may well represent a danger of physical persecution to persons such as relator." Mention is made of the supression of human rights in Haiti and the castigation by international organizations of the political situation then existing in that country. "The regime has affirmatively demonstrated its position as regards human rights and due process of law by suspending all articles of the constitution guaranteeing individual rights, among them being free speech, freedom from arrest and police brutality." supra at 617.

Both the Immigration Judge's decision and the Board of Immigration Appeals' affirmance of that decision are devoid of any reference to the political situation in Chile. It is respectfully suggested that should the planet Mars be substituted in place of Chile in the above decisions, the same standards for formulating an opinion as to potential persecution would be apparent, i.e.,none. Despite the requirements of 8 C.F.R. 242.18- Decision of special inquiry officer,(a) Contents: The decision

shall also contain a discussion of the evidence pertinent to any application made by respondent under §242.17 and the reasons for granting or denying the request.(emphasis supplied), there is no such discussion and the decision reflects a total disregard of the present political situation in Chile.

This Court has the right and duty to review the Attorney General's determination to insure that it adheres to the expressed intent of Congress. What Congress meant by the words "political opinion" should not be left to the unfettered discretion of the Attorney General, but must be passed upon by this Court as a question of law. As this Court previously stated in Sovich v. Esperdy, supra at 26:

> The Attorney General's assessment of the conditions obtaining in any particular country, is, of course, a political matter, a "question of fact." It is equally clear, we believe, that the standards by which those conditions are to be judged-what Congress meant by the expression "physical persecution"- is a question of law. For the Courts to rule upon that issue is not an intrusion into the Attorney General's discretion. It is rather an interpretation of the statutory prerequisites to any proper exercise of his discretion.

Given the vagaries of the Chilean government, it is the petitioner's position that being the brother-in-law of an arrested Communist and having resided in the United States for an extended period of time, his political opinion under Chilean

standards is antithetical to the security of that government and consequently he will be a proper subject for their persecution.

By deduction, the Immigration Judge and Board of Immigration Appeals must have found that the petitioner would not be subject to any persecution despite the familial relationship, a police search of his house and an interrogation of his wife as to his whereabouts. This finding flies in the face of all studies, investigations and reports, from the United Nations, Organization of American States and other world renowned forums.

Chile has been condemned for its present totalitarian and lawless practices. The Service, however preferred not to consider how the arbitrariness of the Chilean police state will affect the petitioner. Other institutions have not shared this cavalier attitude.

In petitioner's brief to the Board of Immigration Appeals, a statistical analysis of arrest and detention of Chileans was presented to indicate the arithmetical odds for the arrest of the petitioner should he be deported to Chile. It was argued that they were less than 80 to one. A recent report by the United Nations Economic and Social Council to the Secretary General of the U.N., on the Situation of Human Rights in Chile (U.N.Document #A/31/253) is replete with documentation of the deprivation of human rights and civil liberties by the Chilean government. Most pertinent for consideration here is

found in a portion of the summary of this report at 129:

> What is profoundly disturbing is that in our time, that of the Universal Declaration of Human Rights and of the International Covenants, when memories of fascist regimes and their excesses are still fresh, a concept of government in relation to human rights persists under which a sizable portion of the population is persecuted or eliminated from national life because of its real or alleged political views, and that the most elementary concepts of democracy, such as any form of election to office, are discarded. The application of such policies and methods of indoctrination and punishment for the purpose of cleansing a country of opponents to officially held doctrines must be a source of grave concern. It was pointed out to the Group that the official doctrine of relations between the State and the individual as it is developing inside the Chilean State is one which would lead to new forms of totalitarianism with many analogies with regimes the existence of which the world would like to forget or at least not to see renewed.
>
> Persons suspected of opposing or potentially opposing the regime are described as "Marxists". This term is applied not only to members or former members of political parties inspired by the Marxist ideology, but loosely to anybody expressing views not corresponding to those officially held. (emphasis supplied)

This Court by reviewing the findings of the Service would be wholly within the permissible ambit of judicial review. As had been stated by Judge Frank of this Court in Fong Foo at 719:

> On the basis of a fact which we know judicially, an administrative determination of the contrary fact is arbitrary and capricious, and therefore administrative action grounded on that finding is outside the administrative discretion conferred by the statute.

To hold that the Service's determination that the petitioner will not suffer persecution based on political opinion at the bloodied hands of the Chilean government is tantamount to obviating the concern expressed by Congress when it enacted this humane legislation.

CONCLUSION

WHEREFORE, petitioner prays that his application for withholding of deportation pursuant to 8 U.S.C. 1253(h) be granted, or

In the alternative, that this case be remanded to the Immigration and Naturalization Service with an affirmative order to reconsider the application herein in light of an interpretation of "political opinion" that considers the Chilean government's attitude of same and mindful of the Congressional intent of the Act.

Respectfully submitted,

POLLACK & KRAMER,ESQS.
225 Broadway - Room 1505
New York, New York 10007

ROBERT F. GREENSTONE,ESQ.
OF COUNSEL

JOINT APPENDIX

THB:ml
76-3159

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

NICOLAS S. NUNEZ-ORELLANA, :

Petitioner, : PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY ACTION.

- v - :

IMMIGRATION AND NATURALIZATION SERVICE, : Docket No. 76-4214

Respondent. :

- x

INDEX TO ADMINISTRATIVE RECORD

	Pages
Notice to effect departure, dated August 19, 1976	1
Decision of the Board of Immigration Appeals, (the "Board"), dated August 16, 1976.	2-4
Memorandum relating to oral argument before the Board dated July 20, 1976.	5
Alien's memorandum to the Board.	6-9
Notice of appeal to the Board, dated November 25, 1975	10
Decision of the Immigration Judge, dated November 20, 1975.	11-14
Transcript of deportation hearings	15-24

THB:ml
75-3159

	Pages
Memorandum of the Immigration Judge	25
Notice of appearance as attorney, dated February 14, 1974	26
Order to show cause and notice of hearing dated February 14, 1974 (Exhibit 1 of deportation hearing).	27
Application for withholding of deportation (Exhibit 2 of deportation hearing).	28
Request for asylum in the United States, dated March 17, 1975 (Exhibit 3 of deportation hearing).	29-48
Letter from Department of State to the District Director of Immigration and Naturalization Service, dated August 13, 1975 (Exhibit 4 in deportation hearing)	49-50

Respectfully submitted,

ROBERT B. FISKE, Jr.,
United States Attorney for the
Southern District of New York
Attorney for Respondent

THOMAS H. BELOTE,
Special Assistant United States Attorney
Of Counsel

BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

PLEASE REFER TO THIS FILE NUMBER
A 21 756 115 DB/QEJ
August 19, 1976

Nicolas Segundo Nunez-Orellana
39 Neulist Avenue
Port Washington, New York 11550

Please note the below checked action which has been taken in your case.

☐ You have violated the terms of your admission as a nonimmigrant. Consequently, permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____.

☒ In accordance with a decision made in your case you are required to depart from the United States at your own expense on or before September 24, 1976 as ordered by the BIA.

☐ Your application for an extension of time in which to depart from the United States has been _____. You are required to depart on or before _____.

You must notify this office, Room No. 13, 14th Floor, on or before September 20, 1976 of the arrangements you have made to effect your departure, including the date, place, and manner.

Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your deportation.

If there is a bond outstanding in your case, you are warned that to expedite cancellation of the bond and return of the collateral posted, you must make advance arrangements with this office to have your departure witnessed by an officer of this Service.

USE THE ENCLOSED SELF-ADDRESSED CARD TO NOTIFY THIS OFFICE REGARDING DEPARTURE ARRANGEMENTS. POSTAGE IS NOT REQUIRED. At the time of your departure, do not fail to surrender Form I-94, ARRIVAL-DEPARTURE RECORD, in accordance with instructions on that form.

cc: Milton D. Kramer, Esq;
225 Broadway,
New York, New York 10007

Very truly yours,

HENRY E. WAGNER
ACTING DISTRICT DIRECTOR

FOR IMMIGRATION AND NATURALIZATION USE ONLY

Departed:

Port _____ Date _____ ☐ I-94 stamped ☐ I-530 submitted
To _____ Via _____ ☐ I-161 prepared ☐ I-156 prepared

Form I-210
(Rev 9-1-70) N

A-1

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS
Washington, D.C. 20530

AUG 16 1976

Robert Greenstone, Esquire
Pollack & Kramer
225 Broadway, Room 1505
New York, NY 10007

NUNEZ
A21 756 115

Reference is made to your interest in the above case.

For your information, there is enclosed herewith copy of the decision and order of the Board of Immigration Appeals.

Sincerely yours,

David L. Milhollan

David L. Milhollan
Chairman

Enclosure

A.2

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A21 756 115 - New York

AUG 16 1976

In re: NICOLAS S. NUNEZ-ORELLANA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert Greenstone, Esquire
Pollack & Kramer
225 Broadway
New York, NY 10007

ON BEHALF OF I&N SERVICE: Paul C. Vincent
Appellate Trial Attorney

ORAL ARGUMENT: July 20, 1976

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251 (a)(2)) - nonimmigrant visitor for pleasure - remained longer than permitted

APPLICATION: Withholding of deportation

This case presents an appeal from a decision of the immigration judge on November 20, 1975, finding the respondent deportable and granting him the privilege of voluntary departure with an alternate order of deportation to Colombia in the first instance and alternatively to Chile. The immigration judge denied the respondent's application for withholding of deportation to Chile, pursuant to the provisions of section 243(h) of the Immigration and Nationality Act, as amended. The appeal will be dismissed.

A3

The respondent is a married native and citizen of Chile, who has resided in the United States since his arrival here in October 1971, as a nonimmigrant visitor for pleasure. He was authorized to remain in this country until January 10, 1972, but has not departed. Deportability has been established by clear, convincing and unequivocal evidence.

The immigration judge found that the respondent had failed to show a well-founded fear of persecution if deported to Chile. He granted him the privilege of voluntary departure in the exercise of discretion.

Upon review of the record, including counsel's contentions on appeal, we conclude that the decision of the immigration judge was warranted. We are satisfied that the respondent has failed to show a well-founded fear that his life or freedom would be threatened in Chile on account of his race, religion, nationality, membership in a particular social group or political opinion. See Matter of Dunar, Interim Decision 2192 (BIA 1973). We conclude, therefore, that the respondent would not be persecuted if deported to Chile. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 39 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Acting Chairman

BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: July 20, 1976

In Re: NICOLAS S. NUNEZ-ORELLANA

File: A-21 756 115

Board: Mr. Milhollan, Miss Wilson and Mr. Torrington

Heard: For Respondent: Robert Greenstone, Attorney
225 Broadway
New York, N.Y. 10007

For Immigration Service: Paul C. Vincent,
Appellate Trial Attorney

Request: 243(h) Relief

COURT REPORTER'S NOTES ON FILE WITH BOARD

mb - 7/20/76

U.S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS
WASHINGTON, D.C.

In the Matter of

NICOLAS S. NUNEZ-ORELLANA
A21 756 115

APPEAL

POLLACK & KRAMER, ESQS.
ROBERT F. GREENSTONE, ESQ.
Attorney for Respondent
225 Broadway - Room 1505
New York, New York

The respondent herein respectfully appeals from the decision of the Immigration Judge denying his request for termination of deportation proceedings and denying his application for withholding of deportation under Section 243(h) of the Immigration and Nationality Act.

The respondent, a native and citizen of Chile bases the above request upon the grounds that should he be compelled to return to his native country he would be subject to persecution.

Firstly, it is proposed and I believe without contradiction that the type of persecution that is pervasive in Chile today, more than fulfills Congress' intention of political persecution, ie., physical torture, imprisonment, death, etc. This has been well documented by various Congressional hearings and the news media and it is requested that this Board take judicial notice that the present Chilean regime possesses a penchant for the physical and mental destruction of many of its citizens.

We must turn to the question of whether there is a strong enough nexus between the Chilean government's policy and the respondent herein to satisfy the burden of proof variously measured as "clear probability of persecution;" Cheng Kai Fu v. INS, 386 F.2d 750 (2 Cir.1967), cert denied 390 U.S.1003; or "well founded fear" Article 1 United Nations 1951 Convention Relating to the Status of Refugees, provided the fear is not purely subjective; or a "realistic" liklihood that he will be persecuted, Matter of Dunar B.I.A. Interim Decision #2192.

It is acknowledged that in attempting to apply any of the above criteria to a specific individual vis-a-vis his government is a question that eludes a finite answer. This is so because one is judging two distinct factors. The first is the respondent and who he is, what he has done and who are his relatives, associates and friends. The other is the political situation of the designated country and how it treats its citizens and more specifically, the citizen respondent.

The former is easier to define. In the case at hand according to sworn testimony by the respondent he is the brother-in-law of a Communist; his house has been searched by the authorities who were investigating his whereabouts; money sent by him to his wife has been expropriated by the same authorities; the in-law has been arrested and has not been heard from since.

The second factor, the present Chilean government's intentions regarding the respondent is subject to a more deductive analysis.

If the respondent were the brother of the late Salvatore Allende it is suggested that the Chilean government's action would be highly predictable and this Board's task infinitely simplified. But he is not, and consequently we enter into a gray area of probability/possibility of political persecution.

Appended hereto are several reports from respected organizations and individuals (UNESCO etc.) from which certain facts and circumstances have been culled.

Item: "It is estimated that almost 100,000 persons, one in every 100 Chileans have been detained at some time for political reasons" (New York Times November 30,1975)

It is conceded that the Chilean government to date has not been notorious for arresting infants or the very old. Conservative demography therefor would indicate that one out of 100 should be modified to one out of 80 "arrestable" Chileans. This ratio applied to the United States would result in 2,800,000 political arrests. In this country with its high degree of literacy and 200 year history of political activisim by the populace, could a dictatorship find 2,800,000 politically dangerous people? Its doubtful. Yet, to deny the respondent's claim on its face would be paramount to stating that only politically involved persons are susceptible to the vagaries of the Chilean government. The reports and statistics indicate otherwise.

Assuming arguendo that apolitical Chileans are not persecuted. The respondent herein can not by Chilean standards be classified as such. He is closely related to a Communist; he has spect the last [illegible]e years in the United States absorbing the free exchange [illegible]deas in our political spectrum; the Chilean government is s[illegible]isticated enough to know he has attempted to stay in the United States including this application. He is no longer that one out of 80.

The Chilean government has come under increasing external pressure to cease its tyrrany and return to the family of democratic governments. However this country has become an international outlaw. Yet it doesn't change its policies because in the words of one of the torturers of the British subject Dr. Sheila Cassidy "Our image in the exterior is so bad that it doesn't matter".

Item: Mr. Belisario Velasco manager of radio station BALMACADA in March 1976 was arrested and exiled to the desert village of Putre. What made his arrest unique is that he was a member of the political commission of Chilean Democratic Party a strongly anti-Allende political party. Yet the ruling regime in their Mikado-like edict found Mr. Velasco to be

suitable prey. This illustrates that if one who was anti-Allende cannot escape the ruthlessness of the government how can the respondent with the aforementioned factors be considered not a prime subject for political persecution.

It is proffered that the respondent herein has met the burden of proof as set forth by this Board. Consequently the respondent respectfully requests that the Immigration Judge's order denying the withholding of deportation under §243(h) be reversed and his application for the withholding of deportation under the said regulation be granted.

Respectfully submitted,

ROBERT F. GREENSTONE, ESQ.
POLLACK & KRAMER, ESQS.
Attorneys for Respondent
225 Broadway - Room 1505
New York, New York 10007

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway

New York, New York 10007

Fee Stamp

In the Matter of:

NUNEZ-Orellana, Nicolas S.

File No. A21 756 115

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated Nov. 20, 1975, in the above entitled case.

2. Briefly, state reasons for this appeal.

The Immigration Judge overextended his discretion in failing to give due weight and notice to the repressive political actions of the Chilean Government.

Detailed reasons will be set forth in a brief upon receipt of the record.

3. I DO desire oral argument before the Board of Immigration Appeals in Washington, D. C.
(do) (do not)

4. I AM filing a separate written brief or statement.
(am) (am not)

Signature of Appellant (or attorney or representative)

MILTON DAN KRAMER.
(Print or type name)

POLLACK & KRAMER, ESQS.
225 Broadway, New York, NY 10007
Address (Number, Street, City, State, Zip Code)

Date

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Form [illegible]
(Rev. 2-15-72)N

BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A-21 756 115

NOV 2 0 1975

In the Matter of	)	
JUNEZ, Nicolas Segundo Orellana	)	IN DEPORTATION PROCEEDINGS
-Respondent-	)	

CHARGE: I & N Act - Section 241(a)(2) - Remained longer-visitor - non-immigrant

APPLICATION: Terminate deportation proceedings; in alternative voluntary departure

IN BEHALF OF RESPONDENT	IN BEHALF OF SERVICE
Pollack & Kramer, Esq. 26 Court Street room 2105 Brooklyn, New York 11242	William Dunlop, Esq. New York, N.Y.

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 33 year old married male alien, native and citizen of Chile, who entered the United States at New York, New York on or about October 8, 1971 as a visitor for pleasure. He was authorized to remain in the United States until January 10, 1972 and remained beyond that date without authority. He is, accordingly, subject to deportation on the charge set forth in the order to show cause, as he concedes.

Respondent has selected Columbia as the country to which he wishes to be sent if deported and has requested that deportation to Chile be withheld under Section 243(h). Respondent has also applied for the privilege of voluntary departure.

Respondent claims that he fears returning to Chile based on his claim

A-11

that his wife's sister is a member of the Communist party or equivalent in Chile. He testified that after the changeover in Chile and the fall of Allende his sister in law was arrested. He has no information as to how long or whether his sister in law is still detained. Sometime thereafter, on one or more occasions, his wife has been questioned at her home. On at least one occasion money, which respondent sent to her in U. S. currency, was found in the home and seized. The respondent has testified in the course of the hearing that his wife was questioned as to his whereabouts and at the hearing today he stated that his wife told them that he was in the United States. His application for asylum filed with the Immigration Service is essentially the same as that given in the course of the hearing with two exceptions. One, with respect to the claim indicated in the application for asylum that he had a brother and sister in law who were arrested and questioned apparently is an error. There is no brother involved, only the wife's sister. The second discrepancy is that the asylum application indicates that the police took the money from the wife because she was afraid to tell the police that he was in the United States. I do not regard either of these discrepancies as having any substantial significance. The simple fact is that the respondent's claim is based on a tissue of evidence which is gossamer thin. He has utterly failed to show that he fears to return to Chile by reason of fear of mistreatment by reason of his race, religion, political opinion, membership in any social class or

nationality. Despite the close relationship between respondent's wife and her sister it is apparent from the claim as made that no harm has come to her other than questioning that would be of obvious interest to the police. Otherwise, she has never been arrested, mistreated in any way so far as herself. There is, therefore, no basis on which the application could be granted on the evidence submitted. The Office of Refugee Migration Affairs has also concluded that the claim is not a substantial one. However, in reaching my determination that the claim is not a tenable one I am not guided by their conclusion but rest on the record before me in its entirety. The application for voluntary departure is not opposed by the government and it will be authorized in the exercised in discretion. I find that the respondent is qualified for that privilege.

ORDER: IT IS ORDERED that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before December 29, 1975 or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Columbia on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforenamed country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to Chile.

IT IS FURTHER ORDERED that the request of withholding of deportation to Chile under Section 243(h) be denied.

FRANCIS J. LYONS
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

NUNEZ, Nicolas Segundo Orellana

FILE A- 21 756 115

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Before: FRANCIS J. LYONS, Immigration Judge

Date: Dec. 10, 1974 Place: New York, N.Y.

Transcribed by Sylvia Davis Recorded by Gray

Official Interpreter Luce Chassaign

Language Spanish

APPEARANCES:

For the Service:

William Dunlop, Esq.
Trial Attorney

New York, N.Y.
Station

For the Respondent:

Pollack & Kramer, Esq.

26 Court St. rcom 2105

Brooklyn, N.Y. 11242

by Arthur Pollack, Esq.

Form I-297
(Rev. 6-1-73)N

GPO 861-991

IMMIGRATION JUDGE TO RESPONDENT (THROUGH OFFICIAL INTERPRETER):

Q What is your name?

A Nunez, Segundo Nicolas Orellana

Q Now, Mr. Pollack is your attorney, is that right?

A Yes.

IMMIGRATION JUDGE to Mr. Pollack: Are you ready, sir?

A Yes sir.

IMMIGRATION JUDGE TO RESPONDENT (THROUGH OFFICIAL INTERPRETER)

Q Mr. Nunez, will you stand, raise your right hand to be sworn?

Do you solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you G-d?

A Yes.

IMMIGRATION JUDGE to Mr. Pollack: On behalf of your client you concede service in the Order to Show Cause?

A Yes sir.

Q Do you waive reading of the contents?

A I do.

Q Do you concede deportability on the charge as set forth in the Order to Show Cause?

A Yes sir.

IMMIGRATION JUDGE TO RESPONDENT (THROUGH OFFICIAL INTERPRETER)

Q In the event of deportation Mr. Nunez, to what country would you want to be sent?

A Columbia.

Q Is there any reason why you could not return to Chile?

A Political reason.

IMMIGRATION JUDGE to Mr. Pollack: Is there an application under Section 243(h)?

A There will be, sir.

IMMIGRATION JUDGE to Mr. Dunlop: In the event such an application is filed, I take it Mr. Dunlop, the Service would wish to make inquiry of the Department of State?

A That's right, your Honor.

IMMIGRATION JUDGE: Mr. Pollack, you do not have the application ready to file today?

A No sir.

Q Is there an alternative application of voluntary departure?

A Yes sir.

Q I take it Mr. Dunlop there will be no objection to granting voluntary departure?

A No, your Honor, there is no reason.

IMMIGRATION JUDGE to respondent (THROUGH OFFICIAL INTERPRETER)

Q Do you have any close relatives in the United States?

A No.

IMMIGRATION JUDGE: Mr. Pollack, in the event an application under Section 243(h) is filed the hearing will be continued through such to the call of the Government while they make whatever administrative inquiry they choose. If however, no application is filed on or before Dec. 28, that will be actually Dec. 30, Dec. 28 is Saturday. If no application is filed for withholding of deportation on or before Dec. 30, then I shall enter an order granting voluntary departure for a period of 30 days.

If an application is filed, the case will be continued subject to the call of the Government. Agreed?

Mr. Pollack: Yes Sir.

Q That is agreeable Mr. Dunlop?

A Yes, your Honor.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

NUNEZ, Nicolas Segundo Orellana

FILE A- 21 756 115

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: FRANCIS J. LYONS, Immigration Judge

Date: November 20, 1975 Place: New York, N.Y.

Transcribed by SYLVIA DAVIS Recorded by GRAY

Official Interpreter Ana C. Rosner

Language Spanish

APPEARANCES:

For the Service:

William Dunlop, Esq.

Trial Attorney

New York, N.Y.

Station

For the Respondent:

Pollack & Kramer, Esq.

26 Court St. room 2105

Brooklyn, N.Y. 11242

by Mr. Greenstone, Esq.

Form I-297

(Rev. 6-1-73)N

GPO 861-111

IMMIGRATION JUDGE TO RESPONDENT (THROUGH OFFICIAL INTERPRETER):

Q What is your name?

A Nunez, Segundo Nicolas Orellana.

Q Mr. Greenstone is your attorney?

A Yes.

Q Are you ready Mr. Greenstone?

A Yes sir.

Q Will you stand and raise your right hand to be sworn. Do you solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you G-d?

A Yes.

IMMIGRATION JUDGE: Mr. Greenstone you have submitted an application for withholding of deportation to Chile?

A That is correct.

Q And also asked for voluntary departure, any other application?

A Not at this time.

Q You want to proceed on the application?

A Yes.

Q Mr. Nunez, will you tell the court in your own words what would happen to you if you were forced to return to Chile and why you believe this will happen should this action be taken?

A Because my family is involved in the Communist party.

Q You say your family is involved in the Communist party. What member of your family is involved in the Communist party?

A My wife's sister.

Q Was she ever arrested by the government?

FORM I-277
(7-28-65)

BEST COPY AVAILABLE

A She was arrested.

Q When was this?

A Shortly after Allende died. Everything happened, when the government changed.

Q Do you know where your sister-in-law is now?

A No, I don't know.

Q The Government that is in power now, did they ever come looking for you or search your house?

A When they went to church, the house was searched.

Q Who was home at the time when they searched your house?

A My wife and my son.

Q To the best of your knowledge, the police or whoever came to search your house, did they inquire of your whereabouts?

A They asked where I was?

Q And what was your wife's reply?

A I came to the United States.

Q Did they ever take anything from your wife that they found there?

A Money from my wife.

Q When did you leave Chile?

A On October 8, 1971.

Q If you were to return to Chile based upon your understanding of the feudal situation now, what do you believe would happen to you if you were forced to return to Chile?

A I believe that they would bother me as they bothered my family and I do not know what they would do to me.

Q Is there a possibility or a probability that they might throw you into

jail?

A Because of what my family was involved in, I believe yes.

Q Besides your sister-in-law, to your knowledge, are there anyother people in your immediate family that were involved politically on one side or the other in the Chilean government?

A I don't have more family, they are the ones they are waiting for.

Q Who are they?

A The sister of my wife and my wife was bothered also.

Q Your wife was involved?

A My wife was not involved but her sister was arrested.

MR. GREENSTONE: There was an involvement to a degree...

IMMIGRATION JUDGE TO Mr. GREENSTONE: Don't frame your questions in terms of either leading or argumentative language. Ask him a question as to what he knows. Don't suggest an answer to it.

Mr. Greenstone: Okay.

MR. GREENSTONE to Respondent(THROUGH OFFICIAL INTERPRETER):

Q When the police came to your house and searched your house and found the money and they questioned your wife as to where she received that money and from whom and what she was doing with it?

IMMIGRATION JUDGE: Mr. Greenstone, the way to ask that question, is by asking what they said or did, don't suggest that the answers were or what the possible action was.

Mr. Greenstone: I understand, but I am dealing with a witness here who has to be scantily led.

IMMIGRATION JUDGE: Alright, I will allow it, ask the question.

Respondent: The police went there for the purpose of finding something

to prove that they were criminals and they found the money and they took the money.

Q How didyou know this?

A Because after that she wrote me a letter telling me about the money.

Mr. Greenstone: I have no further questions.

IMMIGRATION JUDGE Mr. Dunlop?

A I have no questions judge.

Q Do you have the referral to the Department of State?

A I do. I have the referral and the reply? Do you wish to see the reply?

IMMIGRATION JUDGE: I have this form 589 and the fact sheet, the file from the Department of State, the request for asylum, any objection to that being made part of the record Mr. Greenstone?

Mr. Greenstone: No objection.

IMMIGRATION JUDGE: As I understand it, the implication in the 589 referring to a brother is not correct. We are talking only about the sister in law.

A That is correct.

Q Your sister-in-law was arrested. Do you know how long she was held?

A I don't know because when I found out I lost contact with her.

Q Do you know whether she was released?

A I have no idea.

Q And your wife has no idea?

A She never let me know anything.

Q When was the last time you heard from your wife?

A I write to my wife and I send her money for her support and she always answers me when she received the letter but I don't remember....

Q When was the last time you sent her money? A week ago, two weeks?

A About two months ago?

Q Why do you wait so long?

A Every two or three months I send her an amount of money.

Q Do you have children?

A One.

Q Do you have anything else?

A No.

NOTE: AT THIS POINT IN THE PROCEEDINGS THE IMMIGRATION JUDGE DELIVERED AN ORAL STATEMENT OF HIS DECISION IN THIS MATTER. THIS HAS BEEN TRANSCRIBED SEPARATELY AND IS ATTACHED.

IMMIGRATION JUDGE: You reserve the right to appeal Mr. Greenstone.

MR. GREENSTONE: Yes, we do.

IMMIGRATION JUDGE: Your time to appeal expires on November 30, 1975 rather on December 1st, 1975, the following day Monday.

IMMIGRATION JUDGE HEARING WORKSHEET AND MEMORANDUM

NAME NXC File No. A 21 156 115

Name of Applicant Martha Nancy Last Attorney Barlow

Address Represented by

Name of Representative Bilecki & Kamara (Name of Stenographer to Make of Machine)

Interpreter Cassagne - Brailsford

Language Spanish

NATURE OF HEARING Deportability ☐ Contested ☒ Not Contested

☒ Sustained ☐ Not Sustained

☐ Sustained ☐ Not Sustained

Respondent Directed Or

Child

CHARGES Application Country of birth

1. I&N Act Sec. 212(a)( ) ☐ Excludable ☐ Not Excludable

2. I&N Act Sec. 212(a)( ) ☐ Excludable ☐ Not Excludable

PROCEEDINGS Application

COMMENCED ON 12/18/24

12/18/24 Adjourned to Stat. Dec. For call of Court Roll

Adjourned to 11/20/25 1:00 PM For

Adjourned to For

COMPLETED ON 11/20/25

VD to 12/20/25 at 10am 243(h) denied

☐ Reserved ☐ Written (Date) Served

☐ Alien ☐ Trial Attorney due (Date) Brief due (Date) Extended to

☐ Exhibit 296 Served ☐ Transcribe Hearing ☐ Transcript to Attorney

☐ Referred to DDA ☐ Serve Decision ☐ Info copy of oral decision

Francis J. Lyons

Documents to Be Submitted

	DUE		DUE		
Character affidavits		☐ Financial Statement		☐ Other	
Character Inv.		☐ Police Certificate		☐	
Employment Statement		☐ Proof of Residence		☐	

EOIR-6 (1-77)(M)

A-25

BEST COPY AVAILABLE

DEPARTMENT OF JUSTICE
Board of Immigration Appeals
and
Immigration and Naturalization Service

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re:
NUNEZ, Nicolas

DATE: February 6th 1974

FILE NO.: _____

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following person:

Nicolas NUNEZ			RELATIONSHIP TO I&N LAW: ☐ PETITIONER ☒ BENEFICIARY ☐	
(APT. NO.)	(NUMBER AND STREET)	(CITY)	(STATE)	(ZIP CODE)
61	East 198th Street, New York	Apt. 9-A, N.Y.		
			RELATIONSHIP TO I&N LAW: ☐ PETITIONER ☐ BENEFICIARY ☐	
(APT. NO.)	(NUMBER AND STREET)	(CITY)	(STATE)	(ZIP CODE)

Check applicable item(s) below.

☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia NEW YORK _____ (Name of court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board: _____

☐ 3. I am associated with _____, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2, whichever is appropriate.)

☐ 4. Others (Explain fully.) _____

Signature: Stanley Dan Kramer

Complete Address:
POLLACK & KRAMER, ESQ.
26 COURT ST. - ROOM 2105
BROOKLYN, NEW YORK 11242

NAME Type or print:
POLLACK & KRAMER, ESQ.

Telephone number: 212-855-6650

Form G-28
GPO 949 907

GPO 197 O-421-691

A-26

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A21 756 115

In the Matter of IBAÑEZ-ORELLANA, Nicolas Segundo Respondent.

611 West 158th Street, Apt. 9A, New York, New York
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Chile and a citizen of Chile;
3. You entered the United States at New York, N.Y. on or about October 8, 1971 (date)

4. At that time you were admitted as a nonimmigrant visitor for pleasure authorized to remain in the United States until Jan. 10, 1972

5. You remained in the United States thereafter without authorization.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 20 W. Broadway, New York, N.Y., 11th Floor on March 8, 1974(S) at 8:45 a.m., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: February 14, 1974

(signature and title of issuing officer)
ACTING DISTRICT DIRECTOR

(City and State)
NEW YORK DISTRICT

Form I-221 (Rev. 7-1-73)Y

(over)

A-27

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of:	APPLICATION FOR
NUNEZ, Nicolas	WITHHOLDING OF
A21 756 115	DEPORTATION

On behalf of the above-named respondent, application is made under Section 243(h) of the Act for the temporary withholding of deportation to Chile, on the ground that our client fears that he will be subject to persecution because of his political opinion.

Respondent has close relatives in Chile who are opposed to the present regime in that country. Some of them have disappeared. Respondent fears for his life if he were to be compelled to return to Chile.

Respectfully submitted
for respondent,

POLLACK & KRAMER

ARTHUR POLLACK

Dated: January 6, 1974
New York, NY

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

APPLICATION FOR ASYLUM IN THE UNITED STATES

INS Office: NYC
Date: 3/20/73
A# 21 [illegible] 115

(Executed in Duplicate)

INSTRUCTIONS: This form must be presented to the office of the Immigration and Naturalization Service having jurisdiction over your place of address.

NOTE: If additional space is needed to complete answers, use a separate sheet and identify with the number of the corresponding question.

1. NAME (Last, in CAPS)	(First)	(Middle)	
NUNEZ- Orellana	NICOLAS	SEGUNDO	Chilean

3. Address in United States	4. City & Country of Birth	5. Date of Birth (Month, Day, Year)
New Address 39 Neulist Avenue Port Washington, New York 11550	Valparaiso, Chile	11/8/19[illegible]

6. All other names used at any time

Nicolas Segundo Nunez-Orellana

7. Family Members (Names of Spouse and Children)	Place of Birth	Date of Birth	Country Where Located
Raquel Nunez	Valparaiso, Chile		Val. Chile
Nicolas Nunez	Valparaiso, Chile	10/2/65	Val. Chile

8. Social Security Number	9. Occupation
067-50-2569	Animal-Technician

11. Addresses for Past Five Years:
(a) 7 Bond Street, Great Neck, New York — from 1971-1972
(b) 611 West 158th St. New York City — 1972-1973
(c) 39 Neulist Avenue, Port Washington, N.Y. — 1973-to date

12. Other Relatives in U.S. (Names)	(Address)	Relationship	Immigration Status
None			

13. Last Arrival in U.S. (Date)	Place	Type of Entry	Date to Which Admitted or Last Extended
October 8, 1971	New York	B-2	Jan. 10, 1972

United States Visa Issued (Date)	Place	Type	Date (Month, Day, Year)
Santiago, Chile October 7, 1971		B-2	

Passport or Other Travel Document: Type and Number	Date Issued	Date (Month, Day, Year)
Passport No. 1740	9/29/1971	9/29/73

Restrictions on Travel Document	Cost	Obtained by: Self / Other	Visa Extended
No restrictions	300 escudos	XX / If "Other" explain:	

15. Was Travel Document Required from Home Country?
Yes XX No
If "Yes" explain:

16. Are you admissible to any other country?
Yes XX No
If "Yes" explain:

Form I-
(1) (9/72)

A-29

17. If you return to your country, for what reasons do you believe you will be persecuted?

[ ] Race [ ] Religion [ ] Nationality [X] Political Opinion [ ] Membership in a particular social group

[ ] Other:

18. Have you or any [illegible] your family ever been charged, interrogated, arrested, convicted and sentenced, or imprisoned because of the above?

[X] Yes [ ] No If "Yes", explain:

Both my father and sister-in-law have been interrogated, arrested and were held for some time in prison.

Have you ever been arrested for any other reason? [ ] Yes [X] No If "Yes", please list:

[illegible] against you?

[illegible] were arrested and detained, the possibility that I would be arrested upon my return is almost a sure thing.

20. [illegible] any organization(s) which were considered hostile to the interests of your Home Country?

[ ] Yes [X] No

If "Yes", explain:

21. [illegible] which were regarded by the authorities as opposed to the interests of your Home [illegible] Yes [illegible] If "Yes", explain:

[illegible] do these conditions affect your freedom more than the rest of that [illegible] Yes [illegible] If "Yes", explain:

[illegible] my family.

BEST COPY AVAILABLE

23. Have you taken any actions that you believe will result in persecution in your Home Country? [ ] Yes [XX] No If "Yes", explain:

24. Have you personally suffered or been intimidated in any way because of your absence or your actions? [XX] Yes [ ] No
If "Yes", explain:

My wife have been interrogated many times by the police and at one time they found some dollars that I had sent through a friend and the police took the money away from her because she was afraid to tell the police that I was in the United States.

25. Is your claim for asylum based on the fact that you overstayed your leave abroad? [ ] Yes [XX] No If "Yes", explain:

26. Has your request for asylum become known to the authorities of your Home Country? [ ] Yes [ ] No If "Yes", how has this become known?

I do not know, unless the Immigration Service informed the authorities in my Home country.

What do you think would happen to you if you return?

I be arrested, or most likely held in jail for some time.

because of my known political affiliations.

27. Have you ever applied for asylum in any other country? [ ] Yes [XX] No If "Yes", explain what happened:

...can you provide any documentation or evidence (letters, newspapers, court orders, etc.) in support of your request? XX Yes ☐ No
If "Yes", list and attach:

Newspaper clippings from the New York Times

...any other information relative to your case not covered by the above questions? ☐ Yes XX No If "Yes", explain.

So, I declare that I know the contents of this application signed by me and that the statements herein are true and correct.

Nicola Nuñez
(Signature of applicant)

Subscribed and sworn to (affirmed) before me this 1 day of March, A.D. 1975

NY, NY

Justice
(Justice or Officer administering oath)

DPO
(Title)

...District Director

(District Director)

Date:

A-32

Chilean Bishops Accuse Junta of 'Climate of Fear'

By JONATHAN KANDELL
Special to The New York Times

SANTIAGO, Chile, April 24—The Roman Catholic church of Chile today issued a declaration accusing the military junta of the use of torture, arbitrary and lengthy detentions, of causing large-scale unemployment, of making job dismissals for political reasons, and of establishing an economic policy that church leaders said had shifted the burden to the poor.

Chile is living in a "climate of insecurity and fear," the church said.

In response to the statement, Gen. Gustavo Leigh, a member of the junta, said:

"I have great respect for the church, but like many men, without realizing it, they are vehicles for Marxism."

General Leigh said the Government would begin proceed-

Excerpts from the Catholic statement are on Page 12.

ings next week against all political prisoners, and speed the release of those with no charges against them. He added that foreign embassies would be cleared of asylum-seekers within 30 days. More than 200 leftists are still staying in embassies.

"We do not doubt the righteous intention nor the good will of our governors," the bishop's statement said. "But as pastors, we see objective obstacles to reconciliation among Chileans. Such situations can be overcome only by the un-

Continued on Page 13, Column 1

Excerpts From Chilean Church Text

Special to The New York Times

SANTIAGO, Chile, April 24 —Following, as translated by The New York Times, are excerpts from the text of a statement issued today by Raúl Cardinal Silva Henriquez under the title "Reconciliation in Chile":

We Christians must not only reconcile ourselves with each of our enemies or adversaries of yesterday or today. We must also be "artisans of peace" (Matthew, v, 9). For the love of our country we must help establish a regime of coexistence in which all Chileans can live and feel as brothers.

We want to briefly point out what are, in our judgment, the minimal conditions for reaching that goal. But before beginning to develop them, we believe it is essential that all of us ask ourselves sincerely whether we want to reach that goal. Without this sincere will, it is useless to accumulate declarations and measures.

The basic condition for a peaceful coexistence is the full enforcement of a state of law, in which the Constitution and the law are a guarantee for all of us. That is why we are interested in the rapid elaboration of a new Constitution. And that is why we consider it opportune that, in the meantime, the Government has published a Declaration of Principles.

Its explicitly Christian inspiration is valuable, and we believe that, notwithstanding certain insufficiencies in the formulation of the Christian ideal for the social and political life, it constitutes a basis for orienting civic and social action in this emergency situation.

Hopefully everyone, governors and governed, will faithfully follow its spirit in the search for the common good. But we are the first to hope that Christian principles will be incorporated into the Constitution of our country by the free acceptance of our people and after a discussion in which all citizens can participate.

We recall—and it is stated in the Declaration of Principles to which we have referred—that it is permissible to disagree with this or with any government, but that the peace and well-being of the country require that we collaborate with the authorities in everything that is clearly for the common good.

We do not doubt the righteous intention nor the goodwill of our governors. But, as pastors, we see objective obstacles to reconciliation among Chileans. Such situations can be overcome only by the unrestricted respect for human rights as formulated by the United Nations and by the Second Vatican Council.

We are concerned, in the first place, by the climate of insecurity and fear, whose roots we believe are found in accusations, false rumors, and the lack of participation and information.

We are concerned also by the social dimensions of the current economic situation, among which we could point out the increase in unemployment and job dismissals for arbitrary or ideological reasons. We fear that, by accelerating economic development, the economy is being structured in such a way that wage earners must bear an excessive share of sacrifice, without having the desired level of participation.

We are worried that the educational system is being structured and oriented without enough participation by parents and the academic community.

We are worried, finally, in some cases, over the lack of effective legal safeguards for personal security that is evident in arbitrary or excessively long detentions in which neither the persons concerned nor their families know the specific charges against them; in interrogations that use physical and moral pressures; in the limited possibilities for a legal defense; in unequal sentences in different parts of the country; in restrictions of the normal right of appeal.

We understand that particular circumstances can justify the temporary suspension of certain civil rights. But there are rights that affect the very dignity of a human being, and those are absolute and inviolable. The Church must be the voice of all, especially of those who do not have a voice.

We must not forget that it is God who calls us to reconciliation; and it is He also who offers it to us as forgiveness in the sacrament of penitence. That is why we make the words of St. Paul our own:

"We beg you in the name of Christ: let yourselves be reconciled with God (II Corinthians, v, 20).

A-34

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.4/1188
4 February 1976

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Thirty-second session
Item 5 of the provisional agenda

STUDY OF REPORTED VIOLATIONS OF HUMAN RIGHTS IN CHILE WITH PARTICULAR REFERENCE TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (COMMISSION RESOLUTION 8 (XXXI))

Report of the Ad Hoc Working Group established under resolution 8 (XXXI) of the Commission on Human Rights to Inquire into the Present Situation of Human Rights in Chile

CONTENTS

	Paragraphs	Page
Introduction	1 - 23	5 - 10
Chapter		
I. Chilean constitutional and legislative provisions relevant to the inquiry conducted by the Group	24 - 57	11 - 19
A. The progress report	24 - 25	11
B. Modification in the level of the state of siege	26 - 30	11 - 12
C. Declaration of states of emergency	31 - 33	13
D. Modifications of the laws governing the press, radio and television	34 - 38	13 - 14
E. Note on the constitutionality of certain Junta decrees	39 - 42	15
F. The specialized organs of State security	43	15

GE.76-2102

A 35

Chapter		Paragraphs	Page
	G. The judiciary	44 - 50	16 - 17
	H. New institutions	51 - 56	17 - 18
	1. Commission on Constitutional Reform	51 - 53	17 - 18
	2. The Council of State	54 - 56	18
	I. Constitutional acts	57	19
II.	The impact on the enjoyment of human rights of current Chilean constitutional and legislative provisions	58 - 77	20 - 25
	A. The progress report	58	20
	B. The state of siege and limitations on human rights	59 - 77	20 - 25
	1. Emergency situations and limitations on human rights under the international law of human rights	59 - 60	20
	2. Limitations on human rights imposed by current Chilean constitutional and legislative provisions	61 - 73	21 - 24
	3. Limitations on human rights: strictly required by the exigencies of the situation	74 - 77	24 - 25
III.	Arrest and detention on grounds of State security	78 - 109	26 - 33
	A. Political prisoners and persons held without charge	78 - 99	26 - 30
	B. Missing persons	100 - 109	31 - 33
IV.	The question of freedom of movement: the right to leave the country and to return to it	110 - 126	34 - 37
	A. The right to leave the country	111 - 118	34 - 35
	1. The question of diplomatic asylum	111 - 112	34
	2. The question of refugees	113 - 118	34 - 35

III. ARREST AND DETENTION ON GROUNDS OF STATE SECURITY

A. Political prisoners and persons held without charge

78. From the information gathered by the Working Group since the adoption of its progress report, arbitrary arrests and detentions in Chile do not appear to have subsided to any considerable extent. According to the evidence before the Group, arrests have continued to be carried out in homes, places of work and schools and on the streets. Many persons are still arrested without a warrant, sometimes peaceably, occasionally with violence in the presence of members of the family, including children.

79. It was reported that on most occasions those carrying out arrests did not produce proper identification. Only when persistently requested did some Army officers identify themselves by producing their tarjetas de identificación de las Fuerzas Armadas (TIFA) (identity cards of the Armed Forces). When the relatives of arrested persons made inquiries about the actual places where they were being held, their requests were ignored or answered misleadingly.

80. According to testimony presented to the Group, conditions in which persons are being arrested and interrogated may be described as follows. Usually those arrested are transported in cars or vans which do not have licence plates or in vehicles with licence plates that have been altered or covered. After arrest, people are taken for interrogation. Among the interrogation centres mentioned in the progress report (para. 189), Villa Grimaldi is said to continue to be used in spite of repeated denials from the Chilean authorities. In fact, when the Ad Hoc Working Group was expected to visit Chile in July 1975, allegedly most of the prisoners were temporarily transferred from Villa Grimaldi. After the Working Group was refused entry into Chile, Villa Grimaldi appears to have resumed its sinister uses. Prisoners are usually blindfolded for the duration of their stay in such detention centres and the interrogations are accompanied by torture. Some prisoners, apparently, do not survive this period of interrogation; others would seem to be generally kept in such places for several days or even weeks. The Group was told about the case of a political prisoner who heard one of the chiefs of the secret police instruct other officials not to make out an entry card for him and to tell anyone who would ask for him that he was not there. This may explain why some arrested political prisoners are said to have later "disappeared".

81. The Group has been informed that after leaving the interrogation centres, some prisoners spend some time incommunicado at the so-called Cuatro Alamos detention centre, usually a period of one or two weeks, during which they can recover from torture or ill-treatment suffered at the interrogation centre. Finally, upon recovery, the prisoner is transferred to the Tres Alamos detention camp, where visits are permitted, although sometimes only after 20 or 30 days. The Group was told of the case of a political prisoner who was held incommunicado in Tres Alamos for nine days during November 1975, including seven days in solitary confinement. Of the 180 other people who were with him in Tres Alamos, only two or maybe three would have spent less than five days incommunicado. This would be in violation of the Chilean Government's own decree-law No. 1009.

82. Families of prisoners who have disappeared are told that their husband or son or brother has never been arrested. If they do reappear later, a warrant of arrest is issued before the prisoner may be allowed to receive visits. In many cases, arrest warrants are said to have been issued several days after effective arrest and interrogation.

BEST COPY AVAILABLE

83. Many times those arrested and detained are threatened with cancellation of visiting privileges or with being put in subterranean cells on bread and water. Other prisoners have complained that they were beaten while in such cells. It would appear that there is no means of seeking redress for mistreatment in these places. Allegedly, some prisoners have been executed while supposedly attempting to escape. Prisoners may also be placed on lists of those to be expelled from Chile, but if no country will grant them a visa they are told that such is the case because they really are undesirable everywhere. Cases seem to have existed where prisoners who had been granted entry visas by other countries were reclassified as not entitled to expulsion by the Chilean Government.

84. According to the information available to the Group, prisoners who are awaiting trial or who have been convicted are less susceptible to ill-treatment since their custody is supervised by the prison authorities rather than by the secret police. In cases of irregularities, however, they have difficulty in having their situation reviewed. Certain benefits granted normal prisoners by present Chilean legislation, such as the possibility of parole or certain visiting privileges, are frequently denied political prisoners.

85. The uncertainty of the fate of those imprisoned may be better described by members of their families. The following is an account supplied by a group of wives of prisoners who held important posts under the previous government and who have been in detention since the present government took over.

> "... This prolonged and distressing detention of our husbands, which has so severely affected our families and caused such anxiety to their children and wives, has now become still worse as a result of new developments.
>
> "During the second week of September 1975 the military Government announced the release of 12 political prisoners, among whom six were our husbands. They were not released, however. On the contrary it was made known immediately afterwards that these six persons, together with many others, will be brought before the military tribunals by the naval prosecuting authority of the town of Valparaiso. Some of our husbands have already been transferred to Valparaiso prison while others are still in the Ritoque detention camp. What is still more serious, however, is that the announced trial has already been prepared and according to reliable information an enormous file containing more than 1,000 pages has been prepared. Nevertheless the trial has been kept secret so far and although the military authorities have repeatedly announced that there would be a trial of the leaders of the Government of President Allende, no specific information has ever been provided concerning the trial and those presumed to be the accused have not even been notified that preparations are being made for their trial.
>
> "Even our husbands' lawyers were unaware until a few days ago that any trial was to be held and they have not as yet been able to find out what is the subject of the trial.
>
> "According to other reports the public prosecutor has been asked to call for extremely severe penalties for some of the accused.
>
> "While we have no official information, we have learned that this secret trial is being prepared, following the recent transfer of some of our husbands from one prison to another - after the false hope due to the announcement by the authorities of the release of several persons, a hope which now gives way to the prospect of a trial carried out on a wartime basis ..."

86. The Group wishes to point out that in 1974 at the thirtieth session of the Commission on Human Rights, the Chairman of the Commission was authorized to send a telegram to the Government of Chile saying that Senator Luis Corvalan and others detained with him should be released. This appeal has gone unanswered by the Chilean authorities. The General Assembly, in its resolution 3448 (XXX), dated 9 December 1975 has called upon the Government of Chile to ensure that no one is tried retroactively which would be contrary to article 15 of the International Covenant on Civil and Political Rights. This decision would apply to Senator Luis Corvalan and the others who have been in detention since September 1973. In this connexion the Group is deeply concerned to learn that it is proposed to hold a military trial of Senator Luis Corvalan and the other Chilean personalities in March 1976, after the thirty-second session of the Commission comes to an end. This situation is a serious one and calls for an immediate special decision by the Commission, in accordance with the requests for release referred to above. This would be in the interest of justice, which is the first prerequisite for the full enjoyment of human rights and fundamental freedoms.

87. As regards the number of persons being held in detention in Chile, the Group notes that in his statement before the Third Committee of the General Assembly, on 10 November 1975, the Chilean representative stated that today there were fewer than 500 persons detained under the State of Siege Act. A total of 2,117 persons had been sentenced by military courts during the past two years, and those courts had tried cases under the Arms Control Act, infringements of the Act on the Internal Security of the State and also all cases which fell within the normal jurisdiction of the military courts. He stated that the number of persons tried by the armed forces was 1,398; thus, the situation of detainees under the State of Siege Act had changed considerably from one year to the next. 1/

88. In his statement regarding the number of persons detained under the State of Siege Act, presumably the Chilean representative was referring to the total of 494 detainees held in the camps of Tres Alamos, Pirque, Puchuncavi and Ritoque. This information is contained in the statistical summary of detainees issued by SEIDET (Secretaria Ejecutiva Nacional de Detenidos) on 30 September 1975.2/ Although, according to article 2 of the decree creating it, SEIDET was expected to provide statistics of all detainees and places of detention in the whole territory of Chile, the summary mentions only four places. Those still used by DINA and the different Army Intelligence Services, as well as the National Penitentiary and the barracks of the various military regions, are not included although according to reliable information they still exist.

89. According to other information supplied to the Group the number of persons detained for political reasons is much higher than the figure declared by the Chilean representative. In a report submitted to the Working Group it is stated that

> "In the first weeks after the coup, Church sources in Chile estimated the number of prisoners as between 45,000 and 50,000, excluding those who were detained for a period of 24 hours or less. The figure given by the Junta was less than a quarter of that amount. By Spring 1974, official figures were between 3,000 and 4,000 while Church estimates were approximately 10,000." 3/

1/ A/C.3/SR.2155.

2/ La situación actual de los derechos humanos en Chile (document submitted by the Chilean Government) vol. No. 2, October 1975.

3/ Chile, an Amnesty International Report, September 1974.

90. According to another report:

> "In August 1974 it was estimated that out of approximately 180,000 people detained in Chile since the coup for periods ranging from a few hours to fourteen months, only 2,000 had been tried while on repeated occasions prisoners have been sentenced without having had access to any form of legal aid. Others have been released without having been charged after a whole year. The selection of prisoners for trial is so arbitrary that there have even been cases of prisoners who have arrived at their trial without any accusation having been lodged against them." 4/

They have nevertheless been sentenced without, generally speaking, having been able to obtain the assistance of counsel. The World Council of Churches reported that since 11 September 1973 about 100,000 persons have been deprived of freedom, of whom 6,000 are still in detention, while 2,000 have disappeared or are missing in Santiago province alone and about 50,000 persons have left the country in order to avoid political persecution. 5/

91. Independent reporters have also indicated that the number of political prisoners was greater than official figures would lead to believe. In a report published in December 1975 it was stated "Since it overthrew the Allende régime two years ago, the Junta has probably detained for political reasons some 90,000 people, of whom about two thirds were held for more than 72 hours. By conservative estimate, more than 3,000 of these prisoners were executed without trial or died of torture. There are thought to be at least 5,000 political prisoners in jail today". 6/ Another report published in the international press in November 1975 said: "It is estimated that almost 100,000 persons, one in every 100 Chileans, have been detained at some time for political reasons". 7/

92. It has been brought to the attention of the Group that General Pinochet has granted a presidential amnesty to 210 persons implicated in infringements of the law on the state of siege. The prisoners benefiting from this amnesty were released at Christmas 1975 and on the occasion of the New Year. The Chilean authorities have expressly stated that these releases are a further proof of the multiple measures adopted by the Government of Chile towards the total normalization of the country.

93. On the basis of further evidence received by the Group severe conditions of detention, as described in paragraph 136 of the progress report, still prevail in many instances. Overcrowding, mixing of different categories of prisoners, lack of medical services, bedding, food and exercise, and the absence of contact with the outside world (including contact with relatives, counsel, diplomatic or consular representatives, etc.) are reported from various sources.

94. As indicated in chapter II, decree-law No. 1009 limited to five days the period during which agencies responsible for national security could detain a

---

4/ Chile, under the military régime, Chile Committee for Human Rights, 1975.

5/ La situación general de la mujer bajo el gobierno militar de Chile, June 1975.

6/ Time, 1 December 1975.

7/ The Sunday Times Magazine, 30 November 1975.

suspect. Within that time-limit the person detained, according to this decree, must either be released, or placed at the disposal of the competent court or at the disposal of the Ministry of the Interior. The Government of Chile has stated that the decree "was enacted in order to ensure that the restriction of personal freedom as a result of the state of siege is kept within a framework of respect for fundamental rights". 8/

95. In a document presented to the General Assembly by the Government of Chile, 9/ declarations made by 76 individuals, who were either under detention or had been detained and subsequently released, were reproduced. The signatories referred to the good treatment they had received and to the absence of torture or other cruel or inhuman treatment. A study of the statements contained in these documents, especially a comparison of the dates of arrest and dates on which the documents were signed, for those still in custody, reveals extended periods of detention, exceeding significantly the five-day limit provided for in decree-law No. 1009.

96. The recent case of Dr. Sheila Cassidy reinforces the finding that the provisions of decree-law No. 1009 are not generally applied. As Dr. Cassidy's statement indicates (see annex V) she was held in detention for a period of almost two months.

97. This failure to apply decree-law No. 1009 has been partly ascribed to the independent operation of the different intelligence agencies, notably DINA, and because of the negative attitude taken by the judiciary concerning the use of the remedy of amparo. In spite of the fact that according to article 1 of decree-law No. 1009, the violation of its provisions is a criminal offence, punishable under article 150 of the Penal Code and article 330 of the Code of Military Justice, no information has reached the Working Group concerning criminal prosecutions for extended detention in violation of decree-law No. 1009.

98. The attention of the Group has also been drawn to the fate of a large group of Chileans who, having been arrested and subsequently released, live in constant fear of rearrest and a repetition of the cycle of interrogation and imprisonment described above. In some cases people are said to have been arrested as soon as they signed documents attesting to their release. Other men and women who have been released from prison are threatened with new arrests. Relatives of these people also fear that other members of the family will be taken as hostages, as a means of pressure on the former detainees. Frequently many other persons, previously detained, are again picked up, questioned and then released.

99. The evidence before the Group shows conclusively that, either in violation of their own laws or in disregard for generally accepted international human rights standards, the right to be free from arbitrary arrest and detention is not respected in Chile today.

8/ A/C.3/639, p. 31.

9/ La Situación Actual de los Derechos Humanos en Chile, vol. II (Santiago, October 1975).

B. Missing persons

100. The problem of persons who in various ways have been and are being taken away from their homes, places of work, schools and universities, and whose whereabouts remain unknown, sometimes for an extended period, was considered as "very serious" in the progress report (see paras. 138-151) and does not seem to have been solved. The documents submitted to the General Assembly by the Chilean Government 10/ which have been examined by the Group minimize the over-all problem of arrested persons and ignore the problem of those who have disappeared. According to estimates from other sources the number of persons in the country who have been arrested and disappeared exceed 1,000 and may even be close to 2,000. 11/

101. According to information received by the Group, writs of amparo or habeas corpus for the protection of arrested persons continue to be refused. Although the Supreme Court is now consenting to examine applications for amparo or habeas corpus, this development does not appear to have made it possible to free persons held irregularly in custody in prisons or detention camps. The numerous petitions addressed on their behalf to the competent authorities, in particular the Ministries of Defence and of the Interior, the inquiries addressed to police and penal institutions, do not produce any result. Everyone, it seems, gets answers like the following: "Your husband, your son, your father, your brother, is not in custody"; "Your relative has joined the underground as a guerrilla"; or, "You are tools of an international conspiracy to discredit the government". No account is taken of the sworn statements of eye-witnesses of the arrests, including testimonies of close relatives, fellow workers or students, neighbours and friends of those arrested.

102. Among the specific instances of "disappearance" which were brought to the attention of the Group, the following may be briefly described as illustrations of a particularly disturbing situation from the point of view of human rights.

103. Alphonse-René Chanfreau, son of a French father and a Chilean mother, was arrested in July 1974 at his home in Santiago. His wife Erika and her baby were taken by a DINA inspector to the home of her parents. The following morning she was taken away by security forces to an ordinary-looking house near a church. She joined about 60 other people, among them her husband, being held in a single room. All were blindfolded, and they were watched by two armed guards. Mrs. Chanfreau was not interrogated herself and some time later she was allowed to say good-bye to her husband. Three days after she was transferred to the women's section of the Tres Alamos prison where some 100 women were being held. On 7 November, following the intervention of the French Government, she was able to leave Chile, but was unable to obtain any official news about her husband. According to the international press, all public and private inquiries received one and the same answer: "We know nothing of Mr. Chanfreau. He has never been in our custody. His name cannot be found in any of our prison records". 12/

104. Dr. Bautista van Schouwen Vasey was arrested by agents of the military government in December 1973 at a Catholic church where he had been given shelter. The Junta has systematically denied holding Dr. van Schouwen although there would seem to be clear evidence of his arrest in the papers presented to the courts in

---

10/ A/C.3/642.

11/ Commission of the Churches on International Affairs (World Council of Churches), annex III, December 1975.

12/ Le Monde, 28-29 December 1975.

support of the writs of habeas corpus on his behalf by the lawyer Héctor Valenzuela Valderrama, an ex-Vice-President of the Chamber of Deputies of Chile. These writs of habeas corpus were rejected by the courts for no other reason than the denial by the Junta that they were detaining him. His mother, a British subject, wrote to the wife of the President of the Junta, Mrs. Lucía Hiriart de Pinochet, asking her as a mother to intercede for her son. Many weeks later she received a printed form bearing a facsimile signature and informing her that her request had been forwarded to the competent authorities. Notwithstanding the denials of the Junta, recent information suggests that Dr. van Schouwen was admitted to the Naval Hospital of Valparaiso for treatment of injuries caused by torture, that he is still alive but immobilized with a suspected broken back and damage to the spinal cord.

105. Ricardo Ruz Zañartu was arrested by the Chilean Air Force Attorney-General's Office in April 1974, then transferred to the Tres Alamos prison in April 1975 and finally to the penitentiary of Santiago from which he ultimately was to disappear. He was put on trial; the proceedings were practically concluded, all aspects of the investigation having long since been covered, and sentence was soon to be pronounced, with the appearances of the accused before a full court martial. The Attorney-General had asked the Court to sentence the defendant to up to 18 years' imprisonment. In June 1975 members of his family paying the weekly authorized visit saw him being removed from the penitentiary by unidentified individuals. From then on the whereabouts of Ruz Zañartu and the identity of the persons who removed him have remained a mystery. The competent authorities have so far provided his family with no information. A similar occurrence, the case of David Silverman Guruvich, who was kidnapped at the penitentiary itself and who is still missing, was reported in the progress report (see paras. 140-143). The same also applies to Guillermo Beausire Alonso, an Anglo-Chilean, who is "missing" or has "disappeared" (see paras. 144-147 of the progress report). In addition a Catholic priest with the surname of Llidó, born at Valencia (Spain), who was attached to the Diocese of Valparaiso, is known to have disappeared and is presumed to have been taken into custody.

106. The Working Group has received extensive evidence in the form of sworn statements supplied by members of the family or friends of missing persons and other eye-witnesses of their arrest. The following are descriptions by witnesses of some of the methods and procedures used by military intelligence agents in making arrests. It is worth noting that disappearances seem usually to follow illegal arrests.

107. The first witness stated that in August 1974 her husband was arrested for the first time by carabineros. In September of the same year, he was released. He came home sick and had to keep strictly to his bed. In December two individuals came to her house in a vehicle and asked for her husband. They went into the house and one of the men addressed her husband, asking him whether he knew him, to which he replied that he had seen him there (meaning, apparently, the place where he had been detained before). They ordered her husband to get dressed and asked him to go with them, saying he was not to worry, it was only to sign some papers. Her husband immediately got up and put his clothes on. They took him away and she has heard nothing more of him since.

108. The second witness stated that nine armed persons from the police, including two or three women, had come to the family house asking for his brother. As he was not at home, they proceeded to take his sister away in custody for what they called "a few questions". The next day, people came from the Ministry of Defence and asked for medicines to give to his sister "to check a uterine haemorrhage". That was in December 1974 and since then she has not been seen again.

HEARING OF THE INTERNATIONAL COMMISSION

ON

ARBITRARY ARRESTS AND DETENTIONS IN CHILE

Helsinki, Finlandia House, March 28th - 29th, 1976

S T A T E M E N T

sent by Mr. N i a l l M a c D e r m o t,

Secretary - General of the International

Commission of Jurists (Geneva)

I would like to confine my comments to the new Supreme Decree No 187 issued by the Minister of Justice on January 28th, 1976. The term Supreme Decree is rather misleading. It is in fact subordinate in status to Decree Law No. 1009 for which it purports to provide rules.

The new Decree has received a generous reception in certain western newspapers. For example the International Herald Tribune of 30 January said: "The law could mean the end of the virtual disappearance of suspected leftists at the hands of the secret police unit created after the 1973 military coup." The London Times reported it under a headline "Chilean law to prevent torturing of prisoners". We have learned to be rather more cautions about the effect of the Junta's decrees and we are sceptical about the effect of this one.

Article 3 of the Decree deals with arrest procedures and provides that no arrests can be made by the security authorities under the state of siege without the written authority of the head of the security organisation which effects the arrest. A number of comments may be made upon this. First, it deals only with people who are arrested pursuant to the state of siege. Many people can be and are arrested and ill-treated by the security authorities under other powers, such as the Law on Arms Control or the Law on the Security of the State. This Decree affords no protection in these cases. Secondly, this Article appears to be outside the competence of the Minister of Justice. Under the Constitution, the power to authorize arrests under the state of siege is conferred on the President alone. The Junta's Decree Laws Nos 228 of January 1974 and 951 of March 1975 purported to extend this power to the Minister of the Interior and the Intendentes (local governors) respectively. The Minister of Justice cannot by his Decree extend this power to the heads of the

./.

security organisations. Thirdly, this new provision is in itself no protection against ill-treatment. There is nothing in the Decree to suggest that the security authorities will not continue holding suspects incommunicado for long periods, and no sanction is provided if they do. This is the crux of the matter, as it is this practice which makes possible the torture and ill-treatment of suspects.

The Decree provides in Article 1 that those arrested by the security authorities must be medically examined before being taken to an interrogation or detention centre of the security authorities, and again before being transferred to another place or released. The doctors are to be designated by the Medical Legal Services and the National Health Service, and they are to render reports to the Minister of Justice. Again, this calls for a number of comments. First, experience leads us to doubt whether this Article will be carried out in practice. For a long time it was the law that no suspect could be arrested under the state of siege except under a written mandate of arrest signed by the Minister of the Interior. This decree was simply ignored and illegal arrests continued. Secondly, an examination by an official doctor on these occasions unfortunately does not carry conviction. Thirdly, and most important, these examinations will obviously reveal nothing if the security authorities are able to continue holding the suspects incommunicado until all traces of their torture or ill-treatment have disappeared. Fourthly, so long as detainees are still in the hands of the security authorities, they are too terrified to tell anyone of their tortures, for fear that they will be tortured by them again.

These points may be illustrated from the case of Dr. Sheila Cassidy. She was seen by an official doctor while she was being held by the security authorities at Cuatro Alamos after leaving the notorious Casa Grimaldi interrogation centre. She was blindfolded so that she could not identify the doctor, itself a clear indication that she had been tortured. With some difficulty she persuaded the doctor to prescribe for her anti-biotics to treat her urinary infection caused by the electric shocks she had received. When she

./.

first arrived at Cuatro Alamos she still had pin-point electrical burns from her electric shocks, but 10 days later when she was transferred to the military prison camp of Tres Alamos, all traces of the burns had disappeared. As her report shows, she was too terrified to tell anyone of her tortures until she knew that she was beyond the reach of the security authorities.

The new Decree, if it had been in force, would not have made the slightest difference in Sheila Cassidy's case.

These considerations led our organisation to issue a press release in which we expressed our doubts about the new Decree and urged that suspects should be examined by a doctor of the suspect's choice or chosen by his family, and also that they should be examined every 48 hours while in the custody of the security authorities.

The Decree also provides in Article 3 that a copy of the arrest warrant, signed by the head of the arresting organisation naming the place of detention to which the detainee will be taken, is to be given within 48 hours to a member of his family designated by him. If this provision were carried out in practice, it would mark an improvement, since it would mean the end of the anonymous arrests by the security authorities. But again, there is no reason to believe that it will be carried out in practice, and no sanction is provided if it is ignored. Under Decree Law Nº 1009 of May 1975 there was already a requirement that the family be notified of the arrest within 48 hours, but, like the decree law requiring a prior arrest warrant, it was simply ignored by the security authorities.

Articles 4 and 5 contain some extraordinary provisions. Under Article 4 very wide powers of search are given to the security authorities which contain none of the normal safeguards contained in a judicial order for search. Article 5 provides that if any is deprived of his liberty under these powers, the Minister of the

./.

Interior shall take action to expel him from the country. In other words, a mere arrest on suspicion by the security authorities is to result in an automatic order for expulsion without any form of judicial process.

Article 6 provides that the "places and establishments of detention" will themselves be designated by decree. It remains to be seen whether these will include the security authorities' interrogation centres, such as the notorious Casa Grimaldi, or whether they will merely name the regular places of detention such as Tres Alamos to which suspects are transferred after their interrogation is finished.

Article 7 of the Decree provides that the President of the Supreme Court and the Minister of Justice or their designated officers outside Santiago can inspect places of detention without prior warning and can order a medical examination where ill-treatment is alleged. This sounds all very fine, but its effectiveness depends on the points I have already raised, and upon the extent to which the Supreme Court or the Minister will be willing and able to assert themselves. Until now, the Courts have always refused to take any further action on an amparo application once the authorities have produced a written order for detention under the state of siege. It also depends upon whether the suspect can receive visits from his lawyers and family. It may be assumed that neither the President of the Supreme Court nor the Minister of Justice will act except on the basis of some evidence. If no-one can visit the detainee and hear his complaints, there will be no evidence to lay before the Judge or the Minister.

We shall have to see how all this works in practice. If the Chilean authorities really are determined to root out torture, this Decree, combined with other measures, could help to eradicate it. But so long as the Chilean authorities refuse to recognize that torture exists, so long as victims like Dr. Sheila Cassidy are denonnced as malicious liars, we must be forgiven if we remain sceptical.

DEPARTMENT OF STATE

Washington, D.C. [illegible]

Name: Nicolaos Segundo Nunez-Orellana
Nation of Chile
A21 756 115

AUG 18 1975

Maurice F. Kiley
District Director
Immigration and Naturalization Service
[illegible] Broadway
New York, New York 10007

Dear Mr. Kiley:

This is in reply to your letter requesting an advisory opinion on the subject's application for asylum.

On the basis of the information submitted, we are unable to conclude that the applicant should be exempted from regular immigration procedures on the grounds of a well-founded fear of persecution on account of race, religion, political opinion, or membership in a particular social group upon return to Chile.

Some of the factors leading to our recommendation are shown in the enclosure. Should additional information be presented which in the opinion of your office warrants further review, we will be pleased to reconsider our views.

Very truly yours,

[illegible]
For the Attorney General
Director, Office of Refugee and
Migration Affairs

Enclosure:
As stated.

A-49

BEST COPY AVAILABLE

Nicolaos Segundo Nunez-Orellana - A21 756 115

Mr. Nunez-Orellana bases his claim for political asylum entirely on his statements that his brother and sister-in-law were interrogated and detained for some time in prison and that his wife turned U.S. currency over to the Chilean police out of fear of disclosing that he is in the U.S.

Without more details we find it difficult to believe that his fear of persecution is well-founded, particularly since there is no indication that he himself had engaged in any political activity in Chile.

50

A 50

(2)

COPY RECEIVED
Robert B. Fiske, Jr.
UNITED STATES ATTORNEY
11/15/76
Marian L. Bryant

THE ALPERT PRESS INC., 644 PACIFIC ST. BKLYN., N. Y.